

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ZENAIDO REYNA)	
Claimant)	
VS.)	
)	
IBP, INC.)	Docket No. 208,178
)	
Respondent)	
Self-Insured)	

ORDER

Claimant appealed the August 26, 1998 award entered by Administrative Law Judge Pamela J. Fuller. The Appeals Board heard oral argument on March 24, 1999. The Director appointed Jeffrey K. Cooper of Topeka, Kansas, to serve as an Appeals Board Member Pro Tem in place of Gary M. Korte who recused himself in this proceeding.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. Gregory D. Worth of Lenexa, Kansas, appeared for the respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the award.

ISSUES

This is a claim for alleged injuries to the right hand, right arm, right shoulder and neck. The parties stipulated that claimant was injured while working for the respondent because of a series of accidents that culminated on or about September 25, 1995.

The Judge, persuaded by the opinions of the physician selected by the Division to evaluate claimant, awarded claimant benefits for an 18 percent permanent partial impairment to the right arm and shoulder. Claimant argues the Judge erred by failing to award him a 21 percent permanent partial general disability. Besides injuring his right arm and shoulder, he contends he also injured his neck.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. Zenaïdo Reyna worked for IBP, Inc., for approximately 3½ years. The parties stipulated that he sustained personal injury by accident arising out of and in the course of his employment with IBP by a series of accidents culminating on or about September 25, 1995.
2. Board certified orthopedic surgeon Bernard F. Hearon, M.D., treated Mr. Reyna. In November 1995, Dr. Hearon did a carpal tunnel release on the right arm. In June 1996, the doctor did an arthroscopy on the right shoulder, debrided the rotator cuff, and decompressed the shoulder.
3. Three doctors testified and provided their opinions of Mr. Reyna's functional impairment. Dr. Hearon, the treating surgeon, testified that Mr. Reyna has a 3 percent functional impairment to the right upper extremity. But that rating was made according to the fourth edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment (AMA Guides).

Mr. Reyna's medical expert, Pedro A. Murati, M.D., testified that Mr. Reyna has a 21 percent whole body functional impairment, which included ratings for reflex sympathetic dystrophy and myofascial pain in the shoulder girdle musculature and cervical spine. The doctor used the revised third edition of the AMA Guides for that rating.

The doctor selected by the Division to do an independent evaluation, C. Reiff Brown, M.D., testified that Mr. Reyna has an 18 percent permanent partial functional impairment of the right upper extremity according to the revised third edition of the AMA Guides.

4. Only Mr. Reyna's medical expert, Dr. Murati, found that Mr. Reyna has either reflex sympathetic dystrophy in the arm or myofascial pain syndrome in the neck. He diagnosed reflex sympathetic dystrophy (RSD) because Mr. Reyna's right arm is cool, pale, and sweaty. Although Mr. Reyna did not report those symptoms to any doctor, Dr. Murati made those findings in his August 1997 examination. The doctor believes the RSD resulted from the shoulder surgery. Although he found mild atrophy in the shoulder region, the doctor attributes that to the rotator cuff and not to RSD. Finally, absent the myofascial pain syndrome, which he diagnosed after finding taut bands in the shoulder girdle musculature and cervical paraspinal muscles, Mr. Reyna's injuries are limited to the right arm and shoulder.

5. Dr. Hearon, a board certified orthopedic surgeon, treated Mr. Reyna between October 17, 1995 and April 21, 1997. Dr. Hearon diagnosed and treated right carpal tunnel syndrome, a partial rotator cuff tear, and a chronic pain syndrome. During his period of treatment, Dr. Hearon saw no indications of reflex sympathetic dystrophy. Although he did believe that Mr. Reyna has an overuse syndrome that others might consider to be a myofascial pain syndrome, he only identified permanent impairment in the right arm and

shoulder. In more than one instance, the doctor found that Mr. Reyna gave poor effort, which is consistent with symptom magnification. Dr. Hearon believes Mr. Reyna has shoulder pain but the doctor does not believe he has RSD.

6. Dr. Brown, a board certified orthopedic surgeon, examined Mr. Reyna on October 27, 1997, at the request of Administrative Law Judge Kenneth Johnson. Dr. Brown believes Mr. Reyna injured his right arm and shoulder working for IBP. He found Mr. Reyna exaggerated his complaints.

Q. (by Mr. Worth) You mentioned that he demonstrated greater movement of both, the cervical region and the right arm when he got into and drove away in his vehicle. Can you be a little more specific as to what you observed him do with both, the use of his right upper extremities, and his head and neck at that time?

A. (by Dr. Brown) Yes. He used the right arm to open the door of the pickup. The driver's side of the pickup was facing me, so I could visualize him manipulate the door latch, step up on the running board and enter the cab, and using the right arm to assist him by grasping the wheel, and I recall that as he started the car, moved it forward, that he rotated the neck some to clear, to make certain that the drive was clear, free of other vehicles, and when he did that he definitely moved the neck a greater degree than when he did when he was demonstrating his range of motion in my office.

7. Dr. Brown, who had reviewed Dr. Murati's medical report, found no evidence of RSD. According to Dr. Brown, Mr. Reyna does not have RSD. Likewise, the doctor found no trigger points and, therefore, he does not believe that Mr. Reyna has myofascial pain syndrome in either the shoulder or neck.

8. The Judge was persuaded by Dr. Brown's opinions and so is this Board. Based upon Dr. Brown's findings and testimony, the Board is persuaded that Mr. Reyna is exaggerating his symptoms. The Board affirms the Judge's finding that Mr. Reyna has an 18 percent permanent partial functional impairment to his right upper extremity and right shoulder due to this work-related injury.

CONCLUSIONS OF LAW

1. The Board affirms the Judge's finding that Mr. Reyna is entitled to an award for an 18 percent functional impairment to the right upper extremity and shoulder. But the amount of benefits awarded should be modified as our computations yield a somewhat different result.

2. The scheduled injury statute provides that a worker is entitled to a maximum of 225 weeks for an injury to an arm and shoulder.¹

¹ K.S.A. 44-510d(13).

3. As provided by regulation,² after subtracting 13.86 weeks of temporary total disability compensation from 225 weeks, the resulting number is multiplied by the 18 percent functional impairment rating. Performing that math yields 38.01 weeks of permanent partial disability compensation that Mr. Reyna is entitled to receive in this claim.

4. The Appeals Board adopts the findings and conclusions of the judge as set forth in the award to the extent they are not inconsistent with the above.

AWARD

WHEREFORE, the Appeals Board modifies the August 26, 1998 award entered by Administrative Law Judge Pamela J. Fuller.

Zenaido Reyna is granted compensation from IBP, Inc., for a September 25, 1995 accident and a resulting 18% functional impairment to the right upper extremity and shoulder. Based upon a \$424.47 average weekly wage, Mr. Reyna is entitled to 13.86 weeks of temporary total disability benefits at \$282.99 per week, or \$3,922.24, followed by 38.01 weeks of permanent partial disability at the same rate, or \$10,756.45, for a total award of \$14,678.69, which is all due and owing less any amounts previously paid.

The Appeals Board adopts the remaining orders set forth in the award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Gregory D. Worth, Lenexa, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

² K.A.R. 51-7-8.